

REMARKS

This Response and Amendment is filed in reply to the Office Action dated February 28, 2007. By this Amendment, claims 1-3, 5, 8-18, 22-29, 32, 33, 38, 45, 47, 49, 52, 53, 55 and 56 are amended, leaving claims 4, 6, 7, 20, 21, 30, 31, 34-37, 39, 40-44, 46, 48, 50, 51 and 54 unchanged. Claim 19 was canceled in an earlier Amendment.

35 U.S.C. § 102 Rejections

On page 2 of the Office Action, claims 1-3 and 5-6 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,184,068 issued to Wende.

Claim 1 is hereby amended, and calls for:

A modular shelving system, comprising:

- first and second support posts laterally spaced from one another;
- the first support post having a first plurality of connectors extending laterally and away from an exterior of the first support post;
- the second support post having a second plurality of connectors extending laterally and away from an exterior of the second support post; and
- a first shelf releasably attached at an elevation to at least one of the first plurality of connectors at a location exterior to the first support post and at least one of the second plurality of connectors at a location exterior to the second support post such that the first shelf is cantilevered from the first and second support posts at only one end of the first shelf, the first shelf adjustable to different heights along the first and second support posts by releasable attachment to different connectors of the first and second plurality of connectors at respective locations exterior to the first and second support posts, the first shelf comprising:

- a first side bracket;
- a second side bracket; and

- at least one cross member extending between the first side bracket and the second side bracket;

- wherein at least one of the first and second support posts is adapted for releasable attachment to a second shelf at the elevation of the first shelf, wherein the second shelf is cantilevered from the at least one of the first and second support posts at only one end of the second shelf. (Amendment marks not shown).

In contrast, and as acknowledged by the Examiner in the June 27, 2007 Examiner's Interview with the undersigned Applicant's Representative, Wende fails to teach or suggest a cantilevered shelf. In this regard, the phrase "supported in cantilevered fashion" has been removed from claim 1, per the suggestion of the Examiner's Supervisor in the June 27, 2007

Examiner's Interview, and the term "cantilevered shelf" has been modified to "shelf" throughout claim 1 in favor of a new claim phrase clearly specifying the cantilevered nature of the shelf (also suggested by the Examiner's Supervisor in the June 27, 2007 Examiner's Interview).

Wende discloses a display rack that supports both the front and the back portions of each shelf, as opposed to supporting a shelf solely supported at one end (i.e., a shelf that is cantilevered as claimed in claim 1). The shelves of Wende have two side brackets 5, 5', 6, 6'. Each side bracket is supported at a rear end by connectors 11, 11', 12, 12', 22, 22' and at a front end by struts 15, 15', 16, 16' and bolts 19, 19', 20, 20'. The definition of "cantilever" according to www.dictionary.com is as follows: "[a] projecting structure, such as a beam, that is supported at one end and carries a load at the other end or along its length." Wende does not disclose a shelving system that supports the shelves as cantilevered shelves solely at one end (e.g., a rear end), as called for in amended claim 1. Instead, Wende discloses a rack that supports shelves at both front and rear ends. The brackets 5, 6 are reinforced by struts 15, 16, which extend through apertures 17, 18. (See Wende, col. 2, lines 14-15).

Additionally, Wende teaches a shelving system having two uprights that each have one side of a shelf connected thereto. Wende fails to teach, describe, or suggest a shelving system wherein at least one of the first and second support posts is adapted for releasable attachment to a second cantilevered shelf at the elevation of the first cantilevered shelf. Rather, Wende teaches a single shelf being supported by two uprights 1, 2, and neither discloses nor suggests connecting two shelves to one upright at the same elevation. In fact, with the structural arrangement of Wende, supporting two shelves at the same elevation is not possible, because each upright has only one slot at any given elevation.

Finally, as discussed with the Examiner in the June 27, 2007 Examiner's Interview, Wende teaches a shelving system that has first and second support posts 1, 2 laterally spaced from one another. Each support post has apertures that extend through the post in a front-to-rear direction. Wende fails to disclose the posts having pluralities of connectors that extend *laterally* from an exterior of the support post. Laterally has already been defined by the Examiner as being in a side-by-side relationship, as the uprights 1, 2 of the Wende rack. The apertures 3, 4

therefore cannot fairly be used to re-define the term “laterally” as being in front-to-back orientation.

Accordingly, and for other reasons not discussed herein, Wende fails to teach, describe, or suggest the modular shelving system of amended claim 1. Withdrawal of the 35 U.S.C. §102(b) rejection of amended claim 1 is therefore respectfully requested.

Claims 2, 3, 5, and 6 are each ultimately dependent upon amended claim 1, and are therefore allowable based upon amended claim 1 and upon other features and elements claimed in claims 2, 3, 5 and 6 but not discussed herein. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 1-3 and 5-6 is therefore respectfully requested.

On page 2 and 3 of the Office Action, claims 18, 20 and 21 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,561,608 issued to Weider.

Claim 18 is hereby amended, and calls for:

A post for supporting cantilevered shelves in a shelving assembly having a front and a rear, the post comprising:

a periphery having

a front surface substantially facing the front of the shelving assembly;

a rear surface opposite the front surface;

a first side adjacent to the front surface; and

a second side adjacent the front surface and opposite the first side;

a plurality of connectors extending laterally and away from at least one of the first side and the second side of the post, at least a portion of each connector located exterior to the post and adapted for connection to at least two cantilevered shelves at a common elevation wherein the plurality of connectors are a plurality of pins welded to the at least one of the first side and the second side of the post and to which connectors on the cantilevered shelf engage. (Amendment marks not shown).

In contrast, Weider fails to teach or describe pins welded to the first and second side of a post, and instead teaches bolts that are releasably engageable with columns 15. Amended claim 18 calls for a plurality of pins welded to a post to which connectors on the cantilevered shelf can engage. The detachable bolt structure of Weider is significantly different in form and function to the permanent plurality of welded pins claimed in amended claim 18, and are not adapted for

engagement with connectors on a cantilevered shelf as also claimed in amended claim 18. Indeed, Weider fails to provide any suggestion or motivation regarding why such a structure as claimed in amended claim 18 would be necessary or desirable, nor why modification of the Weider structure to a form similar to that claimed in amended claim 18 would provide any benefit or value.

Additionally, and as acknowledged by the Examiner in the June 27, 2007 Examiner's Interview with the undersigned Applicant's Representative, Weider fails to teach or suggest a cantilevered shelf. The Applicant respectfully submits that the columns and connectors of Weider (as identified by the Examiner) are not capable of supporting or adapted to support a cantilevered shelf. Weider clearly discloses four corner posts and connectors that support the shelves at all corners, as opposed to the posts and connectors of amended claim 18 that support at least two cantilevered shelves.

Accordingly, and for other reasons not discussed herein, Weider fails to teach, describe, or suggest the post of amended claim 18. Withdrawal of the 35 U.S.C. §102(b) rejection of claim 18 is therefore respectfully requested.

Claims 20 and 21 are each dependent upon amended claim 18, and are therefore allowable based upon amended claim 18 and upon other features and elements claimed in claims 20 and 21 but not discussed herein. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 20 and 21 is therefore respectfully requested.

Also on page 3 of the Office Action, claims 9-17 and 22-37 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,592,286 issued to Trubiano.

Claim 9 is hereby amended and calls for:

A method of mounting cantilevered shelves to a support post having a front surface oriented to face a front of a shelving assembly, a rear surface oriented to face a rear of the shelving assembly, and a side surface oriented laterally to face a side of the shelving assembly, the method comprising:

selecting a desired height of a first shelf with respect to the support post, the support post having a plurality of connectors at different heights along the support post, each of the plurality of connectors extending laterally and away from the support post;

selecting a connector from the plurality of connectors;

positioning a part of the first shelf at a location adjacent an exterior surface of the support post, the location having an elevation;

attaching the first shelf to the connector at the location solely at a rear end of the cantilevered shelf;

supporting the first shelf solely at the rear end of the shelf and upon the support post at least partially via the connector, such that the first shelf is cantilevered from the first and second support posts at only the rear end of the first shelf; and

attaching a second shelf to the support post at the elevation, wherein the second shelf is cantilevered from the support post at only one end of the second shelf.

(Amendment marks not shown).

Claim 22 is also hereby amended, and calls for:

A method for supporting cantilevered shelves, the method comprising:

providing first and second support posts laterally spaced from one another, each of the first and second support posts having a front, a rear, and opposing sides, wherein the first support post has a plurality of first connectors extending substantially laterally and away from the first support post and located at a first plurality of heights on the first support post, and wherein the second support post has a plurality of second connectors extending substantially laterally and away from the second support post and located at a second plurality of heights on the second support post;

selecting a height for a first shelf by selecting at least one connector from the plurality of first connectors extending laterally and away from the first support post and at least one connector from the plurality of second connectors extending laterally and away from the second support post;

positioning third and fourth connectors on the first shelf at respective locations exterior to the first and second support posts, the respective locations having an elevation;

releasably attaching the third and fourth connectors on the first shelf to the first and second connectors selected on the first and second support posts at the locations; and

supporting the first shelf from the first and second support posts solely at a rear end of the shelf, such that the first shelf is cantilevered from the first and second support posts at only the rear end of the first shelf;

wherein one of the plurality of first connectors extending laterally and away from the first support post is positioned for releasable attachment to a second shelf at the elevation. (Amendment marks not shown).

Claim 33 is also hereby amended, and calls for:

A modular shelving system, comprising:
a support post having a front, a rear, and opposing first and second sides;
a plurality of fastening locations on the first and second sides of the support post, the plurality of fastening locations being exterior to the support post;
a first shelf releasably attached to a location of the plurality of fastening locations on the first side of the support post, the first shelf cantilevered from the support post solely at a rear end of the front shelf and extending forwardly from the support post; and
a second shelf releasably attached to a location of the plurality of fastening locations on the second side of the support post, the second shelf cantilevered from the support post solely at a rear end of the second shelf and extending forwardly from the support post. (Amendment marks not shown).

In contrast, and as discussed with the Examiner in the June 27, 2007 Examiner's Interview with the undersigned Applicant's Representative, Trubiano fails to teach or suggest a cantilevered shelf. Instead, Trubiano discloses a shelf corner support structure that supports one shelf 11 on four support posts 12 (as opposed to being cantilevered) by inserting arms 14, 14' attached to the posts 12 into bores 20 and notches 21 on the shelf 11, wherein bridge plates 25 are inserted into bores 20 on the shelf 11 to support a second shelf 11' from the first shelf 11 by the bridge plate 25. (See Trubiano, col. 1, lines 36-39 and col. 2, lines 55-59).

Regarding amended claims 9, 22, and 33, Trubiano fails to teach, describe, or suggest a method of mounting or supporting cantilevered shelves, or a modular shelving system having a cantilevered shelf. Instead, Trubiano discloses a method of supporting one shelf from four corner support posts. Reference is hereby made to the discussion above regarding claim 1 and the term "cantilevered".

Accordingly, and for other reasons not discussed herein, Trubiano fails to teach, describe, or suggest the method of mounting cantilevered shelves to a support post of amended claim 9, the method for supporting cantilevered shelves of amended claim 22 or the modular shelving system of amended claim 33. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 9, 22 and 33 is therefore respectfully requested.

Claims 10-17, 23-32 and 34-37 are each ultimately dependent upon amended claims 9, 22 and 33, respectively, and are therefore allowable based upon amended claims 9, 22 and 33, and

upon other features and elements claimed in claims 10-17, 23-32 and 34-37 but not discussed herein. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 9-17, 22-37 is therefore respectfully requested.

On pages 3 and 4 of the Office Action, claims 33 and 38-56 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,655,740 issued to Lazarus.

Claim 33 is hereby amended, and calls for:

A modular shelving system, comprising:
a support post having a front, a rear, and opposing first and second sides;
a plurality of fastening locations on the first and second sides of the support post, the plurality of fastening locations being exterior to the support post;
a first shelf releasably attached to a location of the plurality of fastening locations on the first side of the support post, the first shelf is cantilevered from the support post solely at a rear end of the front shelf and extending forwardly from the support post; and
a second shelf releasably attached to a location of the plurality of fastening locations on the second side of the support post, the second shelf is cantilevered from the support post solely at a rear end of the second shelf and extending forwardly from the support post. (Amendment marks not shown).

Claim 40 calls for:

A modular shelving system, comprising:
a support post having a front, a rear, and opposing first and second sides;
a plurality of fastening locations on the first and second sides of the support post;
a first shelf extending to a first exterior location on the first side of the support post and releasably attached to the support post solely at a rear end of the first shelf at the first exterior location, the first shelf cantilevered from the support post and extending forwardly from the post; and
a second shelf extending to a second exterior location on the second side of the support post and releasably attached to the support post at the second exterior location, the second shelf cantilevered from the support post solely at a rear end of the second shelf and extending rearwardly from the support post. (Amendment marks not shown).

In contrast, and as discussed with the Examiner in the June 27, 2007 Examiner's Interview with the undersigned Applicant's Representative, Lazarus fails to teach or suggest a cantilevered shelf. Instead, Lazarus discloses a shelving system having first and second shelves supported along side edges of the shelves 32 by shelf hangers 16 (see Lazarus, Figs. 6A-6D). "Shelf hanger 16 is fabricated as a rigid wire member, having a lower leg 26 and a support leg 28

bent into a V-shape, with the lower leg 26 of shelf hanger 16 being suspended by support leg 28." See Lazarus, col. 3, lines 37-41. The lower leg and upper leg of Lazarus are both secured to an upright wall bracket, thereby teaching a shelf supported at front and rear ends. In this regard, reference is hereby made to the remarks above regarding claims 1, 9, 18, 22, and 33, and the term "cantilevered". In short, the shelves 32 of the Lazarus shelving system are not cantilevered from a support post as claimed in claims 33 and 40. Lazarus also fails to provide any teaching or suggestion why a structure having such a feature (alone or in combination with other features) would be desirable.

Accordingly, and for other reasons not discussed herein, Lazarus fails to teach, describe, or suggest the modular shelving system of amended claims 33 and 40. Withdrawal of the 35 U.S.C. §102(b) rejections of amended claims 33 and 40 is therefore respectfully requested.

Claims 38, 39 and 41-48 are each ultimately dependent upon amended claims 33 and 40, respectively, and are therefore allowable based upon amended claims 33 and 40 and upon other features and elements claimed in claims 38, 39 and 41-48 but not discussed herein. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 38, 39, and 41-48 is therefore respectfully requested.

Claim 49 is hereby amended, and calls for:

A cantilevered shelf releasably connectable to first and second posts at a plurality of different heights along the first and second posts, each post having a front, a rear, and opposed sides, the cantilevered shelf comprising:

a first flange having an end releasably engagable with an exterior surface of one of the opposing sides of the first post, the first flange shaped to extend across less than an entire front width of the first post measured in a lateral direction of the first post to define a bearing surface of the first flange abutting the front of the first post;

a second flange having an end releasably engagable with an exterior surface of one of the opposing sides of the second post, the second flange shaped to extend across less than an entire front width of the second post measured in a lateral direction of the second post to define a bearing surface of the second flange abutting the front of the second post; and

a shelf body attached to and extending between the first flange and the second flange. (Amendments not shown here).

Also, claim 55 is hereby amended, and calls for:

A method for supporting a cantilevered shelf, the method comprising:
providing a first post and second post, the first post laterally spaced from the second post,
selecting a height of a shelf upon the first and second posts;
connecting a first portion of the shelf with an exterior surface on a side of the first post;
connecting a second portion of the shelf with an exterior surface on a side of the second post;
cantilevering the shelf from the first and second posts in one of a forward and rearward direction with respect to the first and second posts;
abutting the shelf against less than an entire front width in the lateral direction of the first post; and
abutting the shelf against less than an entire front width in the lateral direction of the second post. (Amendments not shown here).

In contrast, and as discussed with the Examiner in the June 27, 2007 Examiner's Interview with the undersigned Applicant's Representative, Lazarus fails to teach or suggest a cantilevered shelf. Reference is made to the discussion above regarding this feature found in claims 49 and 55.

As also discussed with the Examiner in the June 27, 2007 Examiner's Interview, Lazarus fails to teach or suggest an abutting relationship between a cantilevered shelf and less than the width of the front of a post from which the shelf is cantilevered as claimed in amended claims 49 and 55. Lazarus fails to disclose or suggest abutting a shelf against any front portion of the disclosed upright wall brackets 12 in any of the figures. Indeed, Fig. 2D appears to disclose just the opposite: a gap between the illustrated shelf and the front of the upright wall bracket. In fact, based upon the drawings and assembly description provided by Lazarus, it would appear that any such abutting relationship between a shelf 32 and an upright wall bracket 12 of the Lazarus system is undesirable – a conclusion that is precisely the opposite of what is claimed in claims 49 and 55.

Accordingly, and for other reasons not discussed herein, Lazarus fails to teach, describe, or suggest the cantilevered shelf of claim 49 or the method for supporting a cantilevered shelf of claim 55. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 49 and 55 is therefore respectfully requested.

Claims 50-54 and 56 are each ultimately dependent upon claims 49 and 55, respectively, and are therefore allowable based upon claims 49 and 55 and upon other features and elements claimed in claims 50-54 and 56 but not discussed herein. Withdrawal of the 35 U.S.C. §102(b) rejections of claims 49-56 is therefore respectfully requested.

35 U.S.C. § 103 Rejections

On pages 4 and 5 of the Office Action, claims 4 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wende in view of U.S. Patent No. 4,197,950 issued to Ovitz. Also on pages 4 and 5 of the Office Action, claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Wende in view of Weider.

Claims 4, 7 and 8 are each dependent upon amended claim 1, and are therefore allowable based upon amended claim 1 and upon other features and elements claimed in claims 4, 7 and 8 but not discussed herein. Withdrawal of the 35 U.S.C. §103(a) rejections of claims 4, 7 and 8 is therefore respectfully requested.

If any issues remain outstanding upon entry of this Amendment, the Examiner is respectfully requested to telephone the undersigned Applicant's Representative at (414) 225-8266.

Respectfully submitted,

BY


Christopher B. Austin
Attorney for Applicant
Reg. No. 41,592

Michael Best & Friedrich LLP
Two Prudential Plaza
180 North Stetson Avenue, Suite 2000
Chicago, Illinois 60601
(414) 225-8266
S:\CLIENT\205332\9011\A2140653.7